IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

OP.No. 29290 of 2001(J)

PETITIONERS:
----

1. **JOY, S/O.PULIKKOOTTIL CHAKKUNNY, KAKKASSERY HOUSE, KALLUMPRAM ANGADY, KADAVUR VILLAGE, THALAPPILLY TALUK, THRISSUR DISTRICT. PRESENTLY EMPLOYED IN TEXAS, U.S.A. REPRESENTED BY HIS POWER OF ATTORNEY, KAKKASSERY PAUL, S/O.MATHEW, KALLUMPURAM ANGADI, KADAVUR VILLAGE, THALAPPILLY TALUK, THRISSUR DISTRICT.**

2. **BINO JOY, W/O.JOY, KAKKASSERY HOUSE, KALLUMPURAM ANGADI, KADAVUR VILLAGE, THALAPPILLY TALUK, THRISSUR DIST - PRESENTLY EMPLOYED IN TEXAS, U.S.A., REPRESENTED BY HER POWER OF ATTORNEY AMMINI, W/O.KAKKASSERY PAUL, KALLUMPURAM ANGADI, KADAVUR VILLAGE, THALAPPILLY TALUK, THRISSUR DISTRICT.**

BY ADV. SRI.P.C.JOSEPH
SRI.JACOB THOMAS
SRI.K.K.GOPALAN

RESPONDENTS:
----

1. **THE TAHSILDAR, THALAPPILLY TALUK, THRISSUR DISTRICT.**

2. **THE VILLAGE OFFICER, CHOWANNUR VILLAGE, THRISSUR DISTRICT.**

BY GOVERNMENT PLEADER SRI. TEKCHAND

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 12/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.47590/2001 IN O.P.NO.29290/2001 J

DISMISSED

12/09/2007 **SD/- THOTTATHIL B.RADHAKRISHNAN,**
J U D G E.

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 SERIES: **COPIES OF RECEIPTS DTD. 28/02/94, 1/9/87, 17/11/86, 5/10/90, 14/10/91, 24/11/92, 12/11/93 AND 23/9/94 EVIDENCING THE PAYMENT OF BUILDING TAX TO PANCHAYAT.**

EXT.P2: **COPY OF THE ORDER OF ASSESSMENT UNDER THE KERALA BUILDING TAX DTD. 5/04/1995.**

EXT.P3: **COPY OF THE NOTICE OF DEMAND DTD. 5/04/95.**

EXT.P4: **COPY OF RECEIPT DTD. 13/05/95 EVIDENCING THE PAYMENT OF BUILDING TAX.**

EXT.P5: **COPY OF RECEIPT DTD. 28/07/95 EVIDENCING THE PAYMENT OF BUILDING TAX.**

EXT.P6 SERIES: **COPIES OF RECEIPTS (4 IN NUMBER) DTD. 26/12/94 EVIDENCING THE PAYMENT OF BUILDING TAX TO PANCHAYAT.**

EXT.P7: **COPY OF DOCUMENT NO.385/99 DTD. 26/02/99 OF S.R.O., KUNNAMKULAM.**

EXT.P8: **COPY OF THE LICENCE ISSUED BY CHOWANNUR PANCHAYATH BEARING NO.195/99-2000 DTD. 17/11/99 IN FAVOUR OF THE 1ST PETITIONER.**

EXT.P9: **COPY OF THE LICENCE ISSUED BY CHOWANNUR PANCHAYAT BEARING NO.196/99-2000 DTD. 17/11/99 IN FAVOUR OF THE 1ST PETITIONER.**

EXT.P10: **COPY OF LETTER NO.C.NO.IV/16/58/98/1648 DTD. 8/03/2000 ADDRESSED TO THE 1ST PETITIONER.**

EXT.P11: **COPY OF CERTIFICATE OF REGISTRATION 15/ST/TCR/2000 M.K. DTD. 8/03/2000 ISSUED BY THE CENTRAL EXCISE IN FAVOUR OF THE 1ST PETITIONER.**

O.P.NO.29290/2001 J

EXT.P12: COPY OF THE RETURN OF SERVICE TAX CREDITED TO GOVT. OF INDIA DTD. 23/04/2001 FOR THE PERIOD OCTOBER 2000 TO MARCH 2001 BY THE 1ST PETITIONER.

EXT.P13: COPY OF THE RETURN OF SERVICE TAX CREDITED TO GOVT. OF INDIA DTD. 23/04/01 FOR THE PERIOD OCTOBER 2000 TO MARCH 2001 BY THE 1ST PETITIONER.

EXT.P14: COPY OF ORDER OF ASSESSMENT BEARING NO.B8.28870/2000 DTD. 21/08/2001.

EXT.P15: COPY OF NOTICE OF DEMAND BEARING NO.B.8.28870/2000 DTD. 21/08/2001.

/TRUE COPY/

P.S.TO JUDGE

KSS

THOTTATHIL B. RADHAKRISHNAN, J.

= =

O.P.No.29290 of 2001-J

= =

Dated this the 12th day of September, 2007.

JUDGMENT

1. The second petitioner is the wife of the first petitioner. This writ petition is filed by them through their duly constituted attorney. It is their case that while they were employed abroad, the second petitioner bought a parcel of land and put up a residential building. A few years thereafter, she put up another commercial building. Thereafter, she allegedly transferred a portion of the commercial building to her husband. The first petitioner, husband, thereafter, converted the transferred portion and put up a "kalyanamandapam" which is covered as per Ext.P13, for payment of service tax.

2. This writ petition is filed on the allegation that Exts.P14

and P15 have been issued under the Kerala Building Tax Act, 1975, hereinafter referred to as the "Act", by treating the buildings constructed earlier as part of the new construction and re-fixing the tax for the entire building. It needs to be immediately noticed that the issue raised is a mixed question of fact and law and is not to be agitated or decided upon in writ proceedings without exhausting the statutory remedies where the disputed questions of facts could be adverted to, considered, resolved and decision arrived at with the aid of materials relevant to decide factual disputes.

3. The impugned recovery has been stayed by this Court as per order dated 3-10-2001 on C.M.P.47590/2001.

4. Having regard to the totality of the facts and circumstances, though the period fixed by the Act for the statutory remedies has already run out, ends of justice

require that the petitioners are given an opportunity to institute and prosecute such statutory remedies by way of appeal and revision.

5. For the aforesaid reasons, the following directions are issued:

(a)If the petitioners file appeals against the impugned assessment orders before the appellate authority within one month from now, those appeals will be entertained and considered on merits without insisting on any payment under the impugned demand, or as a condition for the appeals, if the conditions being imposed hereunder are duly satisfied.

(b)The recovery as per the impugned order will stand deferred till the decision of the aforesaid appeals, if the petitioners deposit an amount of Rs.1 lakh within one month from now.

(c)The appellate authority will consider the appeals

by calling for necessary reports from the Tahsildar and also insisting on the production of the approved plan, permit etc. to determine whether the construction in question has to be treated as a separate building. The appellate authority will also determine the effect of the transfer of a portion of the building as it previously existed, by the second petitioner to the first petitioner.

(d)The petitioners will be given appropriate opportunity of being heard and to place necessary further materials on record.

THOTTATHIL B. RADHAKRISHNAN,
JUDGE.

Sha/-

THOTTATHIL B. RADHAKRISHNAN, J.

= = = = = = = = = = = = = = = = = = = =

O.P.No.29290 of 2001-J

= = = = = = = = = = = = = = = = = = = =

JUDGMENT

Dated: 12th September, 2007.